

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

SCHOTT METAL PRODUCTS, INC. )

and )

THE ESTATE OF SAMUEL C. SCHOTT )

Defendants. )

Case No. 5:13CV950

CONSENT DECREE

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#### APPENDICES

The following appendices are attached to and part of the Consent Decree:

**Appendix 1:** 1) Comprehensive Work Plan, dated 1/28/11

2) Sampling Analysis Plan and Quality Assurance Project Plan, dated 5/20/11

3) Health and Safety Plan, dated 1/28/11

4) EPA Letter dated 8/16/12 approving changes to Comprehensive Work Plan

**Appendix 2:** 1) Soil Gas Survey (contained in Vadose 8/12/12 Monthly Progress Report

2) EPA Letter dated 8/23/12 approving Soil Gas Survey

3) Variant on Soil Gas Survey (contained in Vadose 9/14/12 Monthly Progress Report

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and Defendants Schott Metal Products, Inc. ("Schott Metal") and the Estate of Samuel C. Schott enter into this Consent Decree resolving claims set forth in a Complaint filed concurrently with this Consent Decree for alleged violations of Section 3013 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6934.

#### BACKGROUND

A. Schott Metal is a generator of hazardous waste and the operator of a hazardous waste management facility ("the Facility") located at and near 2225 Lee Drive, Akron, Ohio. Schott Metal has manufactured automobile parts at the Facility since 1948. The Facility is an ongoing business and is situated on land owned partly by Schott Metal and partly by the estate of Schott Metal's former principal, Samuel C. Schott, who passed away on November 10, 2008.

B. Historically, Schott Metal's manufacturing operations generated three basic types of waste: (1) steel scrap, (2) degreasing waste containing, among other substances, trichloroethylene ("TCE"), and (3) paint waste containing, among other substances, toluene and xylene. There are three unpermitted Solid Waste Management Units ("SWMUs") at the Facility, consisting of a land disposal unit (or "landfill"), a drum storage area, and an area below the waste stack at a spray booth where sludges accumulated. These sludges were created from the storage and disposal of paint solvent and degreasing wastes, both of which contained TCE. Beginning in approximately 1998 and continuing into 2005, the Ohio Environmental Protection Agency ("OEPA") issued orders to Schott Metal requiring it to investigate the extent of contamination at its Facility, and submit and implement a closure plan for the hazardous waste

management units on its Facility. On May 25, 2005, the OEPA referred this matter to EPA and requested EPA to require Defendants to provide soil and groundwater data, and to perform corrective action, if necessary. As provided in Paragraph 62, this Consent Decree does not limit or affect the rights of any third parties, including OEPA, not a party to this Consent Decree, against Defendants, except as otherwise provided by law.

C. The Facility is located in a residential area, and each home within the vicinity uses groundwater extracted from residential wells as its primary source of water. Because of the Facility's location and the potential for hazardous wastes, including TCE, cadmium, lead and mercury, to contaminate the groundwater and migrate from the Facility, EPA determined that the Facility may present a substantial hazard to human health or the environment, or both.

D. On August 7, 2006, EPA issued an Administrative Order ("AO") pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), requiring Schott Metal and Samuel C. Schott, to sample and monitor hazardous wastes in the soil, leachate, sediment and groundwater at the Facility. Under the AO, Samuel C. Schott and Schott Metal had thirty (30) Days from the issuance of the AO to submit a plan for carrying out such sampling and monitoring activities. From September 5, 2006 through at least April 26, 2010, Schott Metal failed to comply with the AO.

E. The Complaint against the Defendants alleges that hazardous waste was generated, stored, and disposed of at the Facility during the time that Schott Metal and Samuel C. Schott owned and/or operated it. The Complaint seeks an injunction ordering the Defendants to comply with the AO and seeks a civil penalty pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934(e).

F. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without the adjudication of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED THAT:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 3013(e) of RCRA, 42 U.S.C. § 6934(e). Venue lies in this District pursuant to 28 U.S.C. §§ 1391(c) and 1395(a), and Section 3013(e) of RCRA, 42 U.S.C. § 6934(e), because the alleged violations occurred in Akron, Ohio, and Schott Metal conducts business in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 3013(e) of RCRA, 42 U.S.C. § 6934(e).

#### II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to

ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5 and the United States Department of Justice, in accordance with Section XV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor previously retained, or retained in the future, to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in RCRA or in regulations promulgated pursuant to RCRA have the meanings assigned to them in RCRA, or the regulations promulgated under RCRA, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Complaint" shall mean the complaint filed by the United States in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree;
- c. "Comprehensive Work Plan" shall mean the Work Plan approved by EPA on May 11, 2011, and as modified and approved on August 16, 2012, to ascertain the nature and extent of the threat to human health and the environment posed by the hazardous wastes that were released at the Facility, which is attached hereto as Appendix 1, as approved by EPA;
- d. "Date of Lodging" shall mean the date this Consent Decree is filed with the Court, by the United States Department of Justice, concurrent with a Complaint against Defendants;
- e. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- f. "Defendants" shall mean Schott Metal Products, Inc. and the Estate of Samuel C. Schott;
- g. "Disposal" shall mean "Disposal" as that term is defined in Section 1004(3) of RCRA, 42 U.S.C. § 6903(3);
- h. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. "Effective Date" shall have the definition provided in Section XVI;



j. “Facility” shall mean Defendants’ facilities, as that term is defined in 40 C.F.R. § 260.10, located at 2218 Lee Drive, 2225 Lee Road (Parcel No. 5106337), 2225 Lee Drive (Parcel 5106339), 2209 Lee Road (Parcel No. 5106334), 2227 Lee Road (Parcel No. 5106342), Parcel No. 5106345, which is directly south of 2227 Lee Road, TR 1 Sub 71 Krumroy Farms Proctor RD. 1.500A (Parcel No. 5106336), TR 1 Sub 72 Krumroy Farms Proctor RD. 1.500A (Parcel No. 5106335), and TR 1 Sub 73 Krumroy Farms Proctor RD. 1.500A (Parcel No. 5106338), all in Akron, Ohio;

k. “Hazardous Waste” shall mean “Hazardous Waste” as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

l. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

m. “Parties” shall mean the United States and Defendants;

n. “Section” shall mean a portion of this Decree identified by a roman numeral;

o. “United States” shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

8. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendants shall pay to the United States the sum of \$375,000.00 as a civil penalty.

9. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with written instructions to be provided to

Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio, United States Courthouse, 801 West Superior Avenue, Suite 400, Cleveland, OH 44113 (Phone 216-622-3600). At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Schott Metal Products, Inc.*, and shall reference the civil action number and DOJ case number 90-7-1-09982, to the United States in accordance with Section XV of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

10. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating federal income tax.

#### V. COMPLIANCE REQUIREMENTS

11. Defendants shall comply with Section 3013 of RCRA, 42 U.S.C. § 6934, and the AO issued to Schott Metal Products and Samuel C. Schott in August of 2006.

12. Defendants shall complete all activities required under the Comprehensive Work Plan and the Health & Safety Plan, as approved by EPA (See Appendix 1) and the Soil Gas Survey, and the variant thereto, as approved by EPA (Appendix 2) including the submission of all required plans, reports or other deliverable items to ascertain the nature and extent of the

threat posed by the hazardous wastes present at, or that may have been released at or from, the Facility.

13. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

14. If the submission is approved pursuant to Paragraph 13.a, Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 13.b or 13.c, Defendants shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section XI of this Decree (Dispute Resolution).

15. If the submission is disapproved in whole or in part pursuant to Paragraph 13.c or 13.d, Defendants shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

16. Any stipulated penalties applicable to the original submission, as provided in Section IX of this Decree (Stipulated Penalties), shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

17. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in Paragraph 16.

18. Permits. Where any compliance obligation under this Section or Section VI. (Additional Work) requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section X of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

## VI. ADDITIONAL WORK

19. Based on work performed under the Comprehensive Work Plan and the Soil Vapor Work Plan described above, EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health and the environment which may be presented by the presence or release of hazardous wastes and/or hazardous constituents at or from the Facility. If EPA determines that such additional work is necessary, EPA shall notify Defendants in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) Days after the receipt of such determination, Defendants shall have the opportunity to meet or confer with EPA to discuss the additional work. If EPA requires, Defendants shall submit for EPA approval a work plan for the additional work. EPA shall specify the contents of such work plan. Such work plan shall be submitted by Defendants within thirty (30) Days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

## VII. PROJECT COORDINATORS

20. EPA's and Defendants' respective Project Coordinators shall oversee the implementation of this Consent Decree and function as the principal project contacts.

21. Defendants shall provide EPA with a written notice of any change of its Project Coordinator. Such notice shall be provided at least seven (7) Days prior to the change of Project Coordinator, unless impracticable, but in no event later than the actual day the change is made. Any proposed change of Project Coordinator by Defendants shall be subject to approval by EPA, and any substitute Project Coordinator shall have sufficient technical expertise to adequately oversee

implementation of all activities under the Comprehensive Work Plan, the Soil Vapor Work Plan and any additional work. Defendants' Project Coordinator shall not be an attorney for Defendants in this matter.

#### VIII. REPORTING REQUIREMENTS

22. Defendants shall submit the following reports:

a. On or before the 15<sup>th</sup> day of each month following the Date of Lodging, until termination of this Decree pursuant to Section XIX (Termination), Defendants shall submit to EPA via postal mail or electronic mail a monthly report for the preceding month that shall include the status of any construction or compliance measures; completion of milestones; and problems encountered or anticipated, together with implemented or proposed solutions.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree, and an explanation of its likely cause(s), and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify the United States of such violation and its likely duration, in writing, within ten (10) working days of the day Defendants first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause(s) of the violation and shall then submit an amendment to the report, including a full explanation of the cause(s) of the violation, within thirty (30) Days of the day Defendants

become aware of the cause(s) of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of its obligation to provide the notice required by Section X of this Consent Decree (Force Majeure).

c. The report shall also include the results of all sampling, testing or other data generated by, or on behalf of, Defendants pursuant to this Consent Decree.

23. Whenever any violation of this Consent Decree or any applicable permits, or any other event affecting Defendants' performance under this Decree, or the operation of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

24. All reports shall be submitted to the persons designated in Section XV of this Consent Decree (Notices).

25. Each report submitted under this Section shall be signed by one of Defendants' officials and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

26. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by RCRA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

27. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree, and as otherwise permitted by law.

#### IX. STIPULATED PENALTIES

28. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

29. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$500.00 per Day for each Day that the payment is late.

30. The following stipulated penalties shall accrue per violation per Day for each violation of a separate requirement of Paragraph 12:



<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

31. Compliance Milestones

a. The following stipulated penalties shall accrue per violation per Day for each failure to take any action set forth in a plan, report or other document approved, in whole or in part, by EPA pursuant to Paragraph 14:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

b. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII (Reporting Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$3,000	31st Day and beyond

32. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed, or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

33. Defendants shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

34. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

35. Stipulated penalties shall continue to accrue as provided in Paragraph 32, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

36. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

37. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

38. Subject to the provisions of Section XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of RCRA, 42 U.S.C. § 6901 *et seq.*, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### X. FORCE MAJEURE

39. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event, and best efforts to address the effects of any such event: (a) as it is occurring, and (b) after it has occurred to prevent or minimize any resulting delay to the

greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to EPA's Project Coordinators, within seventy-two (72) hours of when Defendants first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

41. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by

the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

42. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

43. If Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 39 and 40, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XI. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute

under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

45. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

46. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

47. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position, and any supporting documentation relied upon by the United States. The United States'

Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

48. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

49. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

50. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 46 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law,

Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 46, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

51. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of non-compliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 35. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## XII. INFORMATION COLLECTION AND RETENTION

52. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;



c. obtain samples and, upon request, splits of any samples taken by Schott Metal or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Decree.

53. At EPA's request, Schott Metal shall provide or allow EPA or its authorized representatives to take split or duplicate samples, or both, of all samples collected by Defendants pursuant to this Consent Decree. Similarly, at Schott Metal's request, EPA will allow Schott Metal or its authorized representatives to take split or duplicate samples, or both, of any samples EPA may collect under this Consent Decree, provided that such sampling shall not delay EPA's sampling activities. Nothing in this Consent Decree shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA.

54. Until five years after the termination of this Consent Decree, Schott Metal shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Schott Metal's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United

States, Schott Metal shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

55. At the conclusion of the information-retention period provided in the preceding Paragraph, Schott Metal shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Schott Metal shall deliver any such documents, records, or other information to EPA. Schott Metal may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Schott Metal asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Schott Metal. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

56. Schott Metal may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Schott Metal seeks to protect as CBI, Schott Metal shall follow the procedures set forth in 40 C.F.R. Part 2.

57. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws,

regulations, or permits, nor does it limit or affect any duty or obligation of Schott Metal to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

59. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 58. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 58. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

60. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant

case, except with respect to claims that have been specifically resolved pursuant to Paragraph 58 of this Section.

61. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of RCRA, 42 U.S.C. § 6901 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

62. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

63. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XIV. COSTS

64. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees)

incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

#### XV. NOTICES

65. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-7-1-09982

To EPA:

John Nordine, Project Officer  
Land and Chemicals Division, Remediation and Reuse Branch  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd., LCD-9J  
Chicago, IL 60604

To Defendants:

Schott Metal Products, Inc.  
2225 Lee Dr.  
Akron, OH 44306

Counsel for Defendant:

John Pogue  
Harrington, Hoppe & Mitchell  
108 Main Avenue SW, Suite 500  
Warren, OH 44481

66. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

67. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XVI. EFFECTIVE DATE

68. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendants hereby agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

#### XVII. RETENTION OF JURISDICTION

69. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

#### XVIII. MODIFICATION

70. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

71. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 50(a) or (b), as appropriate, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### XIX. TERMINATION

72. After Defendants have completed the requirements of Section V (Compliance Requirements) of this Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request, and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section XI of this Decree. However, Defendants shall not

seek Dispute Resolution of any dispute regarding termination, under Paragraph 46 of Section XI, until ninety (90) Days after service of their Request for Termination.

#### XX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

#### XXI. SIGNATORIES/SERVICE

75. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or her designee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

76. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.



**XXII. INTEGRATION**

77. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

**XXIII. FINAL JUDGMENT**

78. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

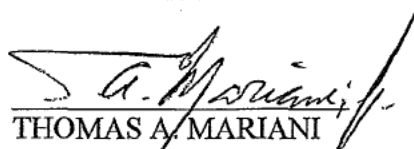
SO ORDERED THIS 22nd DAY OF July, 2013.

/s/ John R. Adams

\_\_\_\_\_  
United States District Judge

The undersigned party hereby consents to the Consent Decree in the matter of United States v. Schott Metal Products, Inc., et al. (N.D. Ohio).

**FOR THE UNITED STATES:**



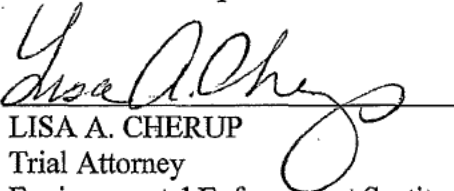
THOMAS A. MARIANI

Deputy Section Chief

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice



LISA A. CHERUP

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, D.C. 20044-7611

Phone: (202) 514-2802

Fax: (202) 616-6584

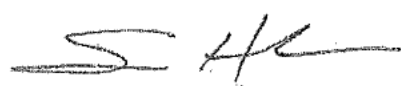
[lisa.cherup@usdoj.gov](mailto:lisa.cherup@usdoj.gov)

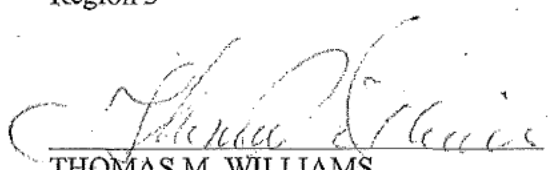
STEVEN M. DETTELBACH  
United States Attorney  
Northern District of Ohio

  
STEVEN J. PAFFILAS (0037376)  
Assistant United States Attorney  
Northern District of Ohio  
801 West Superior Avenue  
Suite 400  
Cleveland, OH 44113  
Phone: (216) 622-3698  
Fax: (216) 522-4982  
steven.paffilas@usdoj.gov

The undersigned party hereby consents to the Consent Decree in the matter of United States v. Schott Metal Products, Inc., et al. (N.D. Ohio).

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

  
SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

  
THOMAS M. WILLIAMS  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604

The undersigned party hereby consents to the Consent Decree in the matter of United States v. Schott Metal Products, Inc. (N.D. Ohio).

FOR SCHOTT METAL PRODUCTS, INC:

Faydella W. Schott

DATE: 2-1-13

FOR THE ESTATE OF SAMUAL SCHOTT:

Faydella W. Schott

DATE: 2-1-13